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OT-5003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Leandre ADIFON, *et al.*
Serial No. 10/520,756
PCT Filed: July 18, 2002
§ 371(c) Date: July 13, 2005
Art Unit: 3654
Examiner: Eric E. PICO
Title: ROOFTOP CONTROL UNIT FOR AN ELEVATOR SYSTEM
HAVING A REMOVABLE COVER

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant now submits its brief in this appeal. The Commissioner is authorized to charge the credit card issued to U.S. Patent and Trademark Office, c/o Otis Elevator Company, in the amount of \$540.00. The Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Real Party in Interest

Otis Elevator Company is the real party in interest. Otis Elevator Company is a business unit of United Technologies Corporation.

Related Appeals and Interferences

There are no related appeals or interferences.

12/09/2008 PCHOMP 00000038 501402 10520756
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OT-5003Status of the Claims

Claims 19, 22-36 and 38-44 are pending and on appeal.

Claims 1-18, 20-21, 37 and 45 are cancelled.

Claims 19, 33 and 40 stand rejected under 35 U.S.C. §102(b) as being anticipated by EP 0646537 (the *Hakola* reference).

Claims 19, 22, 23, 26, 33, 35, 38-40, 43 and 44 stand rejected under 35 U.S.C. §103 as being unpatentable over JP 2000/177949 (the *Toshiyuki, et al.* reference) in view of the *Hakola* reference.

Claims 24, 25 and 34 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and further in view of U.S. Patent No. 6,405,834 (the *Chida, et al.* reference).

Claims 27 and 36 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and further in view of U.S. Patent No. 5,271,455 (the *Semple* reference).

Claims 28 and 42 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and further in view of U.S. Patent No. 6,305,499 (the *Jones, et al.* reference).

Claim 29 stands rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and the *Jones, et al.* reference and further in view of JP 07-097157 (the *Kihachiro* reference).

Claims 30-32 and 41 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Yoshiyuki, et al.* reference in view of the *Hakola* reference and further in view of the *Kihachiro* reference.

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OT-5003**Status of Amendments**

There are no unentered amendments.

Summary of Claimed Subject Matter

There are two independent claims on appeal; claims 19 and 33. Each of those claims are reproduced below with added indications of reference numbers from Figures 1-3 and portions of the specification to show how the claims read on an example embodiment from the specification.

19. An elevator system (20, page 3, line 6), comprising:
 - a cab adapted to carry a load between different levels of a building (22, page 3, lines 7-8);
 - a machine assembly secured to a roof surface on the building and having a drive sheave that causes movement of at least one elongated tension member such that the cab moves as desired and a motor that moves the drive sheave (44, 50; page 4, lines 11-20);
 - a cover removably secured over the machine assembly to cover over the machine assembly (38, page 4, lines 23-24); and
 - a support base that is distinct from and secured to the roof surface, the support base supports the machine assembly, the cover being directly secured to and selectively removable from the support base (36, page 3, lines 17-25),wherein the support base includes a first generally planar surface with a plurality of side portions connected to and extending away from the surface (36, 60, 62; page 5, lines 7-13), and
- wherein the cover includes a corresponding plurality of side walls that are received against the side portions of the support base when the cover is secured to the support base such that one of the side portions of the support base and the side walls of the cover surround and at least partially overlap the other of the side portions of the support base and the side walls of the cover (38, 66; page 5, lines 14-20).

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33. An assembly for housing elevator system machine components on top of a roof surface of a building without requiring a machine room (34, page 3, line 17), comprising:

a support base that is distinct from and adapted to be secured to the roof surface, the support base supporting at least some of the machine components (36, page 3, lines 17-25); and

a cover that is selectively secured to the support base to cover the machine components supported on the base (38, page 4, lines 23-24),

wherein the support base includes a first generally planar surface with a plurality of side portions extending away from the surface (36, 60, 62; page 5, lines 7-13), and

wherein the cover includes a corresponding plurality of side walls that are received against the side portions of the support base when the cover is secured to the support base such that one of the side portions of the support base and the side walls of the cover surround and at least partially overlap the other of the side portions of the support base and the side walls of the cover (38, 66; page 5, lines 14-20).

Grounds of Rejection to be Reviewed on Appeal

Claims 19, 33 and 40 stand rejected under 35 U.S.C. §102(b) as being anticipated by EP 0646537 (the *Hakola* reference).

Claims 19, 22, 23, 26, 33, 35, 38-40, 43 and 44 stand rejected under 35 U.S.C. §103 as being unpatentable over JP 2000/177949 (the *Toshiyuki, et al.* reference) in view of the *Hakola* reference.

Claims 24, 25 and 34 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and further in view of U.S. Patent No. 6,405,834 (the *Chida, et al.* reference).

Claims 27 and 36 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and further in view of U.S. Patent No. 5,271,455 (the *Semple* reference).

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Claims 28 and 42 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and further in view of U.S. Patent No. 6,305,499 (the *Jones, et al.* reference).

Claim 29 stands rejected under 35 U.S.C. §103 as being unpatentable over the *Toshiyuki, et al.* reference in view of the *Hakola* reference and the *Jones, et al.* reference and further in view of JP 07-097157 (the *Kihachiro* reference).

Claims 30-32 and 41 stand rejected under 35 U.S.C. §103 as being unpatentable over the *Yoshiyuki, et al.* reference in view of the *Hakola* reference and further in view of the *Kihachiro* reference.

ARGUMENT

All of the Examiner's rejections must be reversed because every one includes an unreasonable interpretation of the *Hakola* reference. The Examiner contends that the *Hakola* reference teaches side portions and side walls that are received against each other, surround each other and at least partially overlap each other consistent with Appellants' claims. As explained below, the *Hakola* reference does not include such a teaching and, therefore, there is no *prima facie* case against Appellants' claims.

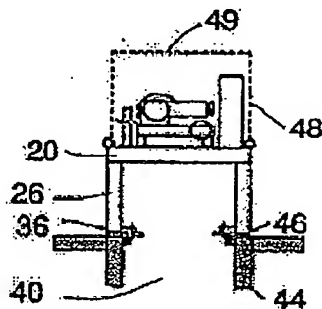
The rejection of claims 19, 33 and 40 under 35 U.S.C. §102(b) must be reversed.

The Examiner contends that the *Hakola* reference teaches a support base 2 that includes a plurality of side portions 26 extending away from a generally planar surface and a cover 49 that includes a corresponding plurality of side walls 48 that are received against the side portions of the support base when the cover 49 is secured to the support base 2 such that one of the side portions 26 of the support base 2 and the side walls 48 of the cover 49 surround and at least partially overlap the other of the side portions 26 of the support base 2 and the side walls 48 from the cover 49.

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(Final Office Action, pages 2-3, paragraphs 8 and 9) The Examiner is incorrect. The *Hakola* reference does not have side walls or side portions that are received against each other or surround and at least partially overlap each other.

Figure 2d of the *Hakola* reference is reproduced here for convenience.



Hakola Fig. 2d

The Examiner contends that "the top surface side portions 26 of the support base 2 surround and overlap the bottom surface of the side walls 48 of the cover 49." Appellants respectfully disagree. The arrangement shown in Figure 2 of the *Hakola* reference includes the frame of the base 2 having steel rails 20 to which a floor 22 is attached. The frame of the base 2 (e.g., the steel rails 20) are "mounted on top of the top module 26 forming the top most part of the elevator shaft." (Column 2, lines 56-58) In Figure 2, the ceiling 49 is received on top of the floor 22 of the base 2 with the bottom edge of the ceiling 49 abutting against the top of the floor 22. There is clearly no contact between the side walls 48 of the ceiling 49 and the side portions 26 of the top module 26. As is clear from the drawing, there is no contact whatsoever between them and, therefore, they are not "received against" each other. Instead, the ceiling 49 is placed on top of the floor 22, which is on top of the rails 20 that are on top of the top module 26.

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Additionally, there clearly is no overlapping relationship between side portions 26 and any side walls 48 of the ceiling 49. The Examiner attributes this feature to the *Hakola* reference but it plainly is not there.

The overlapping side portions and side walls of Appellants claimed arrangement that are received against each other cannot be found in the *Hakola* reference. Overlapping, by definition, requires a configuration where one part extends over and partially covers the other. For example, if a cross section were taken parallel to side portions and side walls that at least partially overlap, it would look something like this:



On the other hand, the pieces of the *Hakola* reference relied upon by the Examiner if viewed in cross-section from a similar perspective would look something like this:



There is a clear distinction between an overlapping arrangement as claimed by Appellants and the non-overlapping arrangement of the *Hakola* reference. The vertical spacing between the side walls 26 and the sides 48 of the ceiling 49 (due to the interposed beams 20 and floor 22) in the

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Hakola reference makes it impossible for them to be received against each other and impossible to find any overlap between them. Therefore, there is no *prima facie* case of anticipation.

If Appellants' claims merely recited side walls and side portions that were "aligned with each other," then there might be correspondence between such a claimed arrangement and that of Figure 2 in the *Hakola* reference. That is not what Appellants' claims recite, however. If Appellants' claims merely recited that the side walls and side portions were "adjacent to each other," there might be correspondence between the reference and such claims. Appellants' claims specifically recite a different arrangement, however, which cannot be found in the *Hakola* reference.

There is nothing about the side walls 48 of the ceiling 49 and the side portions 26 of the top module 26 that in any way has them at least partially overlapping each other.

Additionally, the sides 48 and 26 in the *Hakola* reference are vertically in line with each other in such a way that neither surrounds the other. The outer periphery of each has the same dimension. In other words, the distance between the outside edges of the ceiling sides 48 is the same as the distance between the outside edges of the side portions 26. Therefore, neither surrounds the other at all.

If the Examiner wants to contend that one of the elements 26 or 48 somehow surrounds the other, then it is not possible to say that they overlap. On the other hand, if the Examiner wants to contend that they somehow overlap, then they do not surround. It is simply not possible to construe the arrangement in Figure 2 of the *Hakola* reference as having side walls and side portions that are received against each other, surround each other and at least partially overlap each other. If any one of those features were missing, there is no *prima facie* case of anticipation. Without all three, there is no possible *prima facie* case of anticipation and the rejection must be reversed.

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The rejection of claims 19, 22, 23, 26, 33, 35, 38-40, 43 and 44 under 35 U.S.C. §103 must be reversed.

The Examiner admits that the *Toshiyuki, et al.* reference does not have any teaching regarding the configuration of a cover and a support base consistent with Appellants' claimed arrangement including side portions and side walls that are received against each other such that one of them surrounds and at least partially overlaps the other. The Examiner then contends again that the *Hakola* reference teaches such an arrangement. As discussed above, the *Hakola* reference does not teach such an arrangement and cannot reasonably be interpreted as somehow disclosing the unique arrangement recited in Appellants' claims. Without side walls and side portions that are received against each other, surround each other and at least partially overlap each other, there is no *prima facie* case of obviousness. The rejection must be reversed.

The rejection of claims 24, 25 and 34 under 35 U.S.C. §103 must be reversed.

The Examiner's rejection of claims 24, 25 and 34 based upon the proposed combination of the *Toshiyuki, et al.*, *Hakola* and *Chida, et al.* references does not establish a *prima facie* case of obviousness. This rejection also depends upon the unreasonable interpretation of the *Hakola* reference explained above. There is nothing within any of the three references of the proposed combination that in any way teaches or suggests the surrounding and at least partially overlapping arrangement recited in Appellants' claims. Therefore, the result of the proposed combination does not establish a *prima facie* case of obviousness and the rejection must be reversed.

The rejection of claims 27 and 36 under 35 U.S.C. §103 must be reversed.

When rejecting claims 27 and 36, the Examiner proposes to add the teachings of the *Semple* reference to the proposed combination of the *Toshiyuki, et al.* and *Hakola* references. Even if the *Semple* reference teachings could be added, there still is no *prima facie* case of obviousness because

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the *Hakola* reference does not teach what the Examiner contends. There is no arrangement in the proposed combination corresponding to Appellants' claimed side walls and side portions that surround and at least partially overlap each other. The rejection must be reversed.

**The rejection of claims 28 and 42 under
35 U.S.C. §103 must be reversed.**

In this rejection, the Examiner proposes to add the teachings of the *Jones, et al.* reference to the *Toshiyuki, et al.* and *Hakola* combination. As already explained, there is nothing in that combination of *Toshiyuki, et al.* and *Hakola* corresponding to the arrangement of side walls and side portions as claimed by Appellants. The proposed addition of the *Jones, et al.* reference does nothing to remedy this defect and, therefore, there is no *prima facie* case of obviousness. The rejection must be reversed.

**The rejection of claim 29 under
35 U.S.C. §103 must be reversed.**

When rejecting claim 29, the Examiner proposed to combine four different references, one of which is the *Hakola* reference. The Examiner relies upon the *Hakola* reference for allegedly teaching overlapping side walls and side portions that also surround each other. There is no such teaching in the *Hakola* reference. Therefore, there is no *prima facie* case of obviousness against claim 29 and the rejection must be reversed.

**The rejection of claims 30-32 and 41
under 35 U.S.C. §103 must be reversed.**

This rejection also depends upon the unreasonable interpretation of the *Hakola* reference. Without the side walls and side portions surrounding and at least partially overlapping each other, there is no *prima facie* case of obviousness. The rejection must be reversed.

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OT-5003**CONCLUSION**


There is no *prima facie* case of anticipation or obviousness against any of Appellants' claims. The Examiner's position regarding the teachings of the *Hakola* reference is unreasonable. The references relied upon by the Examiner fail to disclose or in any way suggest the unique arrangement of side walls and side portions as recited in Appellants' claims as explained above. All rejections must be reversed.

Respectfully submitted,

CARLSON, GASKEY & OLDS, P.C.

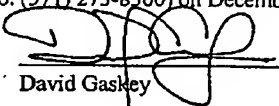
December 8, 2008

Date



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Birmingham, MI 48009
(248) 988-8360**CERTIFICATE OF FACSIMILE**

I hereby certify that this Appeal Brief, relative to Application Serial No. 10/520,756, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on December 8, 2008.



David Gaskey

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OT-5003APPENDIX OF CLAIMS

19. An elevator system, comprising:
- a cab adapted to carry a load between different levels of a building;
 - a machine assembly secured to a roof surface on the building and having a drive sheave that causes movement of at least one elongated tension member such that the cab moves as desired and a motor that moves the drive sheave;
 - a cover removably secured over the machine assembly to cover over the machine assembly; and
 - a support base that is distinct from and secured to the roof surface, the support base supports the machine assembly, the cover being directly secured to and selectively removable from the support base,
- wherein the support base includes a first generally planar surface with a plurality of side portions connected to and extending away from the surface, and
- wherein the cover includes a corresponding plurality of side walls that are received against the side portions of the support base when the cover is secured to the support base such that one of the side portions of the support base and the side walls of the cover surround and at least partially overlap the other of the side portions of the support base and the side walls of the cover.
22. The system of claim 19, wherein the side portions are exterior to the side walls when the cover is secured to the support base.
23. The system of claim 19, including an electronic controller that controls the motor supported beneath the cover.
24. The system of claim 19, wherein the cover includes an access opening through the cover and a cover portion that selectively closes off the access opening.
25. The system of claim 19, wherein the cover includes a portion that is moveable relative to another portion of the cover to provide access to at least some of the machine assembly.

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26. The system of claim 19, wherein the cover has a top surface and a plurality of side walls extending away from edges of the top surface less than one meter such that the height of the cover from the roof surface is less than one meter when the cover is secured in place.
27. The system of claim 19, including a temperature control device associated with the machine assembly for controlling the temperature within the space covered by the cover.
28. The system of claim 19, wherein the tension member comprises a flat belt.
29. The system of claim 28, including a plurality of flat belts and a plurality of terminations supporting at least one end of the belts, the terminations being covered over by the cover.
30. The system of claim 19, including a termination supporting at least one end of the tension member and wherein the cover covers the termination.
31. The system of claim 30, wherein there are a plurality of tension members and a plurality of terminations with each termination being covered by the cover.
32. The system of claim 31, wherein the cover has a height of less than one meter.

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33. An assembly for housing elevator system machine components on top of a roof surface of a building without requiring a machine room, comprising:

a support base that is distinct from and adapted to be secured to the roof surface, the support base supporting at least some of the machine components; and

a cover that is selectively secured to the support base to cover the machine components supported on the base,

wherein the support base includes a first generally planar surface with a plurality of side portions extending away from the surface, and

wherein the cover includes a corresponding plurality of side walls that are received against the side portions of the support base when the cover is secured to the support base such that one of the side portions of the support base and the side walls of the cover surround and at least partially overlap the other of the side portions of the support base and the side walls of the cover.

34. The assembly of claim 33, wherein the cover includes an access opening through the cover and a cover portion that selectively closes off the access opening.

35. The assembly of claim 33, wherein the cover has a top surface and a plurality of side walls extending away from edges of the top surface less than one meter such that the height of the cover from the roof surface is less than one meter when the cover is secured to the support base.

36. The assembly of claim 33; including a temperature control device associated with the support base for controlling the temperature within the space covered by the cover.

38. The assembly of claim 33, wherein the side portions are exterior to the side walls when the cover is secured to the support base.

39. The assembly of claim 33, wherein the entire cover is removable.

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40. The assembly of claim 33, wherein the machine comprises a motor and a drive sheave that rotates responsive to the motor to move at least one tension member in a manner that causes a desired elevator cab movement.

41. The assembly of claim 40, including at least one termination that supports at least one end of the tension member and wherein the termination is at least partially contained between the support base and the cover.

42. The assembly of claim 40, wherein the tension member comprises at least one flat belt.

43. The assembly of claim 33, wherein the cover has a height that is less than one meter.

44. The system of claim 19, wherein the support base comprises a single piece of material that establishes the first generally planar surface and the plurality of side portions.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.